

Legal Protection or Perpetrators of Crimes With the Element of Self-Defense

Iman Sejati Zendrato ^{1*}, Yasmirah Mandasari Saragih ², Fauzan ³

^{1,2,3} Program Studi Magister Ilmu Hukum, Universitas Pembangunan Panca Budi Medan, Indonesia

Email : [*imansejatizendrato01@gmail.com](mailto:imansejatizendrato01@gmail.com) ¹, yasmirahmandasari@gmail.com ², fauzan123.dosen@gmail.com ³

Abstract Legal protection is an effort made by the government to protect its citizens in accordance with legal regulations that aim to realize justice, legal certainty, and benefits. The application of law is a system that aims to regulate and protect every action or behavior that occurs within the scope of society with various norms and sanctions that are binding and coercive in order to prevent problems from occurring. Every person who commits a crime will certainly be held accountable in the form of sanctions for the violations committed. In this writing process, the normative legal research method or normative juridical method is used using a statutory approach, a conceptual approach, and a comparative approach. A crime in general can also be caused by actions or deeds that are not directly carried out with an element of intent in the form of protection or self-defense. Accountability for criminal acts on the basis of self-defense in this case can be justified as long as it meets the requirements and limitations according to legal provisions. Thus, self-defense efforts in the criminal act process cannot be punished if they meet the elements of self-protection because there is no way out, meet the unlawful nature, for the benefit of oneself, others and public order issues, and do not go against the norms that live in society.

Keywords: Protection, Law, Accountability, Criminal Acts, Defense.

1. INTRODUCTION

In everyday life, people often become victims of a crime in the form of a crime committed because of the actions or deeds of others. When someone feels threatened by a crime that might happen to him, then that person will certainly try to defend himself to survive and protect himself.

Law is a system of rules that exist in society in which there are norms and sanctions that have a regulatory and coercive nature with the aim of controlling human behavior, maintaining order and justice, and preventing chaos through the application of strict sanctions in the form of punishment for those who violate it. The purpose of law is to ensure the continuity of balance in relations between communities. (Bambang Hartono, 2013)

The application of law is one of the protection systems for everyone and maintains by maintaining a security system in action. Criminal law is the law that applies in regulating a prohibition or violation that is associated with the threat of criminal punishment for a criminal act committed. Crime or violation in the normative legal sense is an act as manifested *in abstracto* in criminal regulations. (Sudikno Mertokusumo, 1999)

In principle, the law aims to protect the interests of victims and perpetrators, so that the essence of certainty, benefit and justice as the objectives of the law can be realized properly. However, it is not uncommon to find several cases that are felt to injure the sense of "justice". The value of justice is indeed abstract and the benchmark for each person's consideration of

justice can be different depending on the values that base their paradigm on justice itself. Law enforcement is an effort to overcome crime rationally, fulfilling a sense of justice and being effective. (Julaiddin, 2020)

Someone who commits a crime and is proven to have committed a crime, sometimes they cannot be sentenced to a criminal offense. These things are called the form of reasons for eliminating criminal offenses. (Lubis, 2020). Reasons for eliminating criminal offenses are rules that are used as the basis for consideration in deciding criminal cases. Reasons for eliminating criminal offenses are intended to see whether someone should be punished or not because of their circumstances.

Meanwhile, in the provisions of criminal law in Indonesia, sanctions for perpetrators of murder have been regulated, contained in Article 338, Article 339, and Article 340 of the Criminal Code (KUHP) which read as follows: Article 338 states "Anyone who intentionally takes the life of another person, is threatened for murder with a maximum imprisonment of fifteen years". Article 339 states "Murder followed, accompanied or preceded by a criminal act, which is carried out with the intention of preparing or facilitating its implementation. Or to free oneself or other participants and criminal in the case of being caught red-handed, or to ensure control obtained unlawfully, is threatened with life imprisonment or for a certain period, a maximum of twenty years". Article 340 states "Anyone who intentionally and with prior planning takes the life of another person, is threatened for murder with premeditation, with the death penalty or life imprisonment or for a certain period, a maximum of twenty years".

A crime in general can also be caused by an action or deed that is not directly carried out with an element of intent, either in the form of protection or self-defense. Self-defense is basically the instinct of every person to defend themselves from threats, evil deeds or other actions that can harm themselves. In fact, it is often found that at the time of self-defense, people accidentally take someone's life. Murder committed in a state of forced self-defense or unintentional murder is an act committed by someone without any element of intent that results in the loss of another person's life. (Roy V Karamoy, 2021).

Regulations regarding legal protection for a person who commits a crime due to a forced situation or emergency defense have been regulated in the Criminal Code of the Republic of Indonesia, Article 48, which states that anyone who commits a crime due to the influence of a coercive force can be exempted from criminal penalties and in Article 49 paragraphs (1) and (2) which state that a person who commits a crime to defend himself and others regarding life, honor, morality and property from something that attacks or threatens

him and excessive defense caused by severe psychological shock due to a threat or attack on himself and others, cannot be subject to criminal sanctions.

Self-defense is one of the rights and obligations granted by law to every person to maintain the safety of his life, both the safety of his life, property and honor. And basically self-defense is a right that is an instinct of every person to defend himself or others, property and honor from the evil actions of other parties, who want to damage or harm unlawfully.

In practice, self-defense efforts in a criminal act are not always easy. This is based on the principle of proportionality or balance, that self-defense efforts must be balanced with the threat that will come or is ongoing. The crime of murder based on self-defense is used as a justification, but not a reason that justifies an unlawful act, but rather someone who is forced to commit a murder crime can be used because there was a violation of the law that preceded the act.

Based on the legal problems outlined in this background, the main topic of discussion in this written study is "how is the application of legal protection and accountability for perpetrators of criminal acts with an element of self-defense?"

2. WRITING METHOD

The method used in this writing is a normative legal research method or normative juridical using a statute approach , a conceptual approach , and a comparative approach . The (Jhonny Ibrahim, 2005). data collection technique is carried out through *library research* by using the concepts of legal experts that are still related to the basis for the judge's consideration to acquit the defendant in the *noodweer excess case* . The sources of legal materials used are in the form of primary and secondary legal sources from literature, in the form of journals or books related to self-defense and forced defense in Indonesian criminal law. After the data is collected, it is presented using an informal method in the form of a description. Descriptive research is a method aimed at describing existing phenomena, which occur at present or conditions in the past.

3. RESULTS AND DISCUSSION

Criminal Liability

Law is a guideline that regulates human life patterns that have an important role in achieving the goal of peace of life for society. (Saragih, 2020). In the process of legal regulation involves the relationship between accountability by the consequences of the actions of criminals. The product of this accountability is known as criminal law. In its development, the

purpose of criminal law or punishment has its own views that have changed over time with various schools of thought or classifications. (Saragih, 2022). The process of criminal responsibility or what is known as *responsibility or criminal* perfectly does not only concern the law itself but also concerns the moral values or general morality adopted by a society or groups in society. (Amrani, 2015). This aims to reduce the problem of general morality adopted by society as a system to determine whether a suspect or defendant is held responsible for a crime that has been committed.

Criminal liability emphasizes the importance of error as a measure for imposing sanctions, not as an attempt to impose blame on the perpetrator. As an action cannot be done without going through thought or consideration in a person, intention becomes a very objective measure and is uniquely found in the perpetrator. (Hadiyanto, 2024).

In the concept of criminal responsibility there is a general principle that we hear, namely *geen staafzonder schuld* which means no crime without fault. Basically, in the Criminal Code used in Indonesia there is not a single article that regulates this principle, only the existence of the principle is interpreted as a form of unwritten law that can be seen from two perspectives, namely related to the crime (*daad strafrecht*) and the perpetrator of the crime (*dader strafrecht*).

In essence, in the process of accountability the principle of legality becomes the basis for committing a crime, and that a person can face criminal guilt even though his actions are wrong and violate the law. Criminal responsibility is basically a process designed to respond to deviations from certain agreed activities. (Huda, 2006).

Accountability is a form of effort to determine whether someone will be released or punished for a crime that has occurred. In the case of someone having an aspect of criminal responsibility, there are several elements that must be met to state that the person can be held accountable. These elements are the existence of a crime and an element of error.

The Principle of Forgiveness for Criminal Acts in Self-Defense

The principle of forgiveness or *rechterlijk pardon* is a concept in law that aims to create justice, restoration, and peace. This principle also places criminal punishment as the last alternative. In the Indonesian legal system, the principle of judicial forgiveness is an embodiment of the first principle of Pancasila. In its provisions, a judge can issue a pardon decision if it meets the criteria stated in Article 54 paragraph (2) of the 2023 Criminal Code (KUHP). The principle of forgiveness in Indonesian criminal law is a concept that allows a judge to issue a pardon sentence to a perpetrator or defendant.

The concept of implementing the principle of forgiveness (*rechterlijk pardon*) aims to restore justice, restore the perpetrator and victim, reconcile all parties involved, and apply

criminal punishment as a last alternative. In giving punishment, the principle of forgiveness considers several things, such as the lightness of the act committed, the personal circumstances of the perpetrator, and the circumstances and situations that occurred at the time the crime was committed such as efforts to protect or defend oneself.

Basically, the term self-defense is a right that is taken by itself from natural law, not part of positive law. In the Middle Ages, self-defense was only used as a basis for release from a sentence, not a condition aimed at avoiding a sentence. (Wijaya, 2022). In the 18th century, self-defense was allowed for people who wanted to defend themselves in an emergency. This form of emergency self-defense occurred because society was not given protection by the state. While in the 19th century, self-defense was an emergency that occurred due to danger that had cornered the victim so that he was driven to protect himself or due to mental shock due to being attacked and threatened, such a condition cannot be punished. (Fauzia, 2020).

Self-defense efforts in criminal acts are known as forced defense actions which are justifications that eliminate the unlawful element of the act. (Hiariej, 2015). In relation to this, the essence of forced defense is that the perpetrator takes action to avoid a greater crime or avoid a threatening danger.

Regarding self-defense actions regulated in the provisions of Article 48, Article 49 paragraph (1), and Article 49 paragraph (2) of the Criminal Code, there are differences in terms between the three formulations of the articles. In Article 48 it is better known as coercive power or *overmacht*, in Article 49 paragraph (1) it is referred to as self-defense or *noodweer*, while in Article 49 paragraph (2) it is known as self-defense that exceeds the limits or is referred to as *noodweer ekses*. The three formulations of the articles show that self-defense efforts have indeed been accommodated in the criminal law system in Indonesia.

Self-defense efforts in the Indonesian legal system are regulated in Article 49 paragraph (1) of the Criminal Code, which states: "No one shall be punished if he commits an act of self-defense for himself or for another person, his moral honor or his or another person's property, because there is an attack or threat of attack that is very close at that time which is against the law." Self-defense actions in self-defense efforts have several elements that are the core of their application, including: the defense is forced; the person being defended is himself, another person, his moral honor, or his or another person's property; there is an instant attack or threat of attack that is very close at that time; and the attack is against the law. (Hamzah, 004).

Legal Protection for Criminal Offenders with Self-Defense Elements

In principle, the purpose of criminal law is to seek material truth in the form of the real truth about who the perpetrator of the crime is who should be charged and indicted. For that

purpose, the police must conduct investigations and inquiries. So, it is very possible that a suspect is then detained for the sake of investigation.

Basically, in accordance with the principle of legality, every act cannot be punished unless there is a statutory regulation that has regulated it first. *A contrario* can be interpreted that every act that has been determined to be a criminal act and in the statutory regulation, can be punished. Criminal acts only concern the issue of the act, while the issue of whether the person who committed the act can then be held accountable is another issue. In many cases, criminal acts can occur even though seen from the heart of the perpetrator of the crime, it is not at all appropriate to blame him. In other words, even though he has committed a crime, the perpetrator is not covered by guilt, therefore he cannot be held accountable. (Simanjuntak, 2024).

In the Criminal Code, the definition of forced defense is not specified and explained and whether defense is a person's right or obligation. However, legal experts explain in detail what is meant by forced defense. Forced defense (*noodweer*) is a *rechtsverdediging* which is a right to provide legal resistance. This resistance is seen as *retchmating* or considered legal according to law not because the person who was attacked has made a defense, but because his self-defense is a *rechtsverdediging*, because with the attack we have the right to fight back to protect ourselves or others. (Lamintang, 2014).

Viewed from the perspective of monistic teachings or views on crimes, then in the case of *noodweer*, the act is considered not to fulfill the elements of being against the law, while in *noodweerexes*, the criminal act remains, but the element of criminal responsibility, namely the perpetrator's fault, is erased. The act carried out in forced defense must be an act that is balanced with the danger or threat of attack, the existence of this balance is very important so that someone who carries out the defense does not exceed the limits of his actions in protecting himself from attack.

In the provisions of the Criminal Code Article 49 paragraph (1) it is explained that: "No one who commits an act of forced defense for himself or for others, the honor of morality or property of himself or others, because there is an attack or threat of attack that is very close at that time which is against the law". Forced defense is a defense carried out by someone because of a very urgent situation against an urgent and sudden attack that is threatening and against the law. The existence of an action carried out in urgent circumstances can be categorized as forced defense. (Cahyani, 2019). This occurs because there is a reason that can eliminate the unlawful nature (*wederrechtelijkheid* or *onrechtmatigheid*), then the reason for eliminating the criminal nature (*strafuitsluitings-grond*) is also explained by the existence of reasons that

justify actions , actions or justify actions that are generally criminal acts which are called *fait justificatif* .

Furthermore, a futuristic interpretation of the explanation of Article 34 of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) states that there are four conditions for a forced defense. First, there must be an attack or threat of an unlawful attack that is immediate. Second, the defense is carried out because there is no other way (subsidiary) to ward off the attack. Third, defense can only be carried out against interests that are determined in a limited manner, namely the legal interests of oneself or others, honor in the sense of morality, or property. Finally, the balance between the defense carried out and the attack received (proportionality).

4. CONCLUSION

Responsibility for criminal acts based on self-defense in this case can be justified as long as it meets the requirements and limitations according to legal provisions. A person who carries out self-defense if proven to have done it and the elements are met, it means that he cannot be punished. The elements that influence criminal responsibility are that the act is an act that has no way out, must meet the so-called unlawful nature, and must be in the interests of oneself, others and public order and not against the norms that live in society. as stipulated in Article 49 paragraph (1) and paragraph (2). Self-defense in Article 49 of the Criminal Code is divided into two, namely self-defense (*noodweer*), regulated in Article 49 paragraph (1) of the Criminal Code and extraordinary self-defense (*noodweer excess*) or defense beyond the limits, regulated in Article 49 paragraph (2) of the Criminal Code.

Thus, the provisions in the Indonesian Criminal Code provide legal protection for acts of self-defense (forced) carried out by someone who is a victim of a crime. Forced defense is considered not punishable because it is a right that everyone has to fight against acts that are against the law. However, not all forced defenses can be exempted from legal prosecution. The forced defense must meet several elements, including the elements of attack and defense in order to be a justification. Meanwhile, for forced defense that goes beyond the limit, it can be a reason for forgiveness, as long as there is a great mental shock, which results in a disturbance of a person's mental or spiritual state, as a result of a threat or a previous attack. A person who carries out forced defense if he is proven to have done it and the elements are met, it means that he cannot be punished, so he is released because he does not meet the elements of *noodweer*.

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